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4 Attorneys for Plaintiff, CHARLES ARY III

6 UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ALASKA

9 CHARLES ARY, III,
10 Plaintiff,
11 vs.

CASE NO.

12 UNITED STATES
13 Defendant
14

**COMPLAINT FOR MEDICAL
NEGLIGENCE**

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18 COMES NOW, Plaintiff CHARLES ARY III, and alleges in this civil Complaint
19 as follows:

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21 **PARTIES AND JURISDICTION**

- 22 1) This is a medical negligence case brought by Plaintiff Charles Ary III, a disabled
23 Marine Corps Vietnam War Veteran, against the United States due to harm caused
24 him by the Department of Veterans Affairs, Veterans Administration health care.
25 This Court has jurisdiction of this case pursuant to 28 U.S.C. §1346(b) and 38

1 U.S.C. § 7316.

- 2 2) Plaintiff seeks remedies and damages against the United States provided by
3 sections 1346(b) and 2672 of title 28 for damages for personal injury, ... caused by
4 the negligent or wrongful act or omission of any physician ... in the performance
5 of medical, dental, or related health care functions ... while acting within the scope
6 of his duties or employment.
- 7 3) Plaintiff alleges that physician employees of the Veteran's Administration and
8 other medical professionals employed by the Veteran's Administration failed to
9 exercise the required minimum degree of learning, judgment, skill, conduct and
10 care applicable under the circumstances in the management of Plaintiff's medical
11 condition, resulting in injury and harm to Plaintiff.
- 12 4) The Plaintiff is Charles Ary, III, born in 1950. Charles is currently 62 years old.
13 He is a disabled Marine Corps veteran who served his country during the Vietnam
14 War. He was wounded in action, receiving the Purple Heart. He suffers from
15 PTSD and other medical conditions as a result of his combat experiences.
- 16 5) Plaintiff's address is: 7930 Resurrection Drive, Anchorage, Alaska 99504. The
17 medical negligence alleged in this Complaint took place at Veterans
18 Administration medical facilities in Anchorage Alaska, within the jurisdiction of
19 this Court.
- 20 6) The Defendant is the United States of America. This claim follows an
21 administrative tort claim dated 2/28/11 filed by Plaintiff against the Department of
22 Veterans Affairs. A true and correct copy of Plaintiff's administrative tort claim,
23 dated 2/28/11 is attached and incorporated by this reference as Exhibit 1.
- 24 7) On March 2, 2011, the Department of Veterans Affairs acknowledged receipt of
25 Exhibit 1. A true and correct copy of correspondence from the Department of
26 Veterans Affairs Office of Regional Counsel, dated 3/2/11, is attached and

1 incorporated by this reference as Exhibit 2.

- 2 8) More than six months have passed without the Department of Veterans Affairs
3 accepting or rejecting Plaintiff's administrative tort claim. Plaintiff has satisfied
4 the pre-suit requirements before filing this Complaint.
- 5 9) The facts giving rise to Plaintiff's claims of medical negligence include the
6 following: Plaintiff has a history of back problems, beginning from the time of his
7 basic training in the Marine Corps, where he was subjected to abuse. From the
8 years of approximately 2000 (when Charles was 50 years old) until 2008, Plaintiff
9 was experiencing intermittent back pain. In October of 2008, Plaintiff began
10 experiencing severe back pain. In January of 2009, Plaintiff was at home alone
11 and fell and was unable to get up. He was taken by ambulance to the Elmendorf
12 Hospital VA facility in Anchorage Alaska where he was treated. A MRI was
13 performed on January 27, 2009 and a verified report of the MRI results was
14 entered into the medical record on January 28, 2009. A true and correct copy of
15 the MRI report is attached and incorporated by this reference as Exhibit 3.
- 16 10) Rather than providing appropriate care and treatment for Plaintiff's medical
17 condition, Defendant told Plaintiff that he could continue conservative care.
- 18 11) Plaintiff alleges that based upon his condition as it existed in late January 2009,
19 he should not have been told that conservative care would be appropriate for his
20 condition, but rather that surgical intervention for his spine condition was required
21 so as to avoid further injury.
- 22 12) Rather than provide surgical care to Plaintiff or refer him to a specialist for his
23 spine condition, Defendant allowed, recommended and directed a course of
24 conservative treatment that was ineffective, did not meet the requisite standard of
25 care and was in fact harmful to Plaintiff. The conservative care included
26 acupuncture and chiropractic care, including spinal manipulation and was contra-

1 indicated for Plaintiff's medical condition.

2 13) Plaintiff alleges that Defendant failed to obtain an appropriate second medical
3 opinion as to whether Plaintiff's condition in January of 2009 required surgical
4 intervention or whether continuing conservative care was appropriate. Plaintiff
5 further alleges that Defendant improperly delayed the provision of adequate
6 medical/surgical care and treatment.

7 14) Plaintiff alleges upon information and belief that Defendant has a pattern and
8 practice of not providing adequate or appropriate medical care to Veterans such
9 as Plaintiff, unless and until the Veteran or someone on the Veteran's behalf
10 complains about care and demands attention.

11 15) Plaintiff alleges that Defendants and Defendant's employees did not have the
12 degree of knowledge or skill possessed or utilize the degree of care ordinarily
13 exercised under the circumstances, by health care providers in the field or
14 specialty in which the Defendant is practicing; and that as a proximate result of
15 this lack of knowledge or skill or the failure to exercise this degree of care the
16 Plaintiff suffered injuries that would not otherwise have been incurred.

17 16) Plaintiff underwent three surgeries to address his back condition. Dr. Paul Jensen
18 performed the first surgery in March of 2009. He performed a second surgery in
19 May 2009. Dr. Timothy Cohen performed a third surgery in October of 2009.
20 Plaintiff remains in pain and has permanent injuries, despite the three surgeries.

21 17) Plaintiff contends that his outcome would have been better had Defendant not
22 been negligent and that his surgical care and subsequent recoveries were made
23 more complicated and difficult by the negligence of Defendant. Plaintiff alleges
24 that the delay between January 2009 and subsequent surgical treatment caused a
25 deterioration in Plaintiff's health and permanent injury, pain and disfigurement.

26 18) Plaintiff alleges that Defendant is responsible for the negligence of its employees,

1 including: Michael R. McCoy, M.D., Gregory M. Kisling D.O. Ph.D., Ronda E.
2 Merrihew, and others.

3 19) Plaintiff alleges that Defendant is responsible for its own negligence to the extent
4 that it has caused harm to Plaintiff.

5 20) As a result of the negligence of Defendant and that of its employees, Plaintiff has
6 incurred medical bills past and present that he has been required to pay or is
7 obligated to pay from his own funds, as opposed to the subject care being provided
8 through the Department of Veterans Affairs.

9 21) As a result of the negligence of Defendant and that of its employees, Plaintiff will
10 incur medical bills and will be required to undergo medical care and treatment in
11 the future, in an amount to be determined at trial based upon the evidence
12 presented.

13 22) As a result of the negligence of Defendant and that of its employees, Plaintiff has
14 experienced a loss of dignity, respect and has endured pain and suffering and loss
15 of enjoyment of life, damages for which he seeks in an amount to be determined at
16 trial based upon the evidence presented.

17 23) As a result of the negligence of Defendant and that of its employees, Plaintiff has
18 experienced permanent severe injury and disfigurement, including "foot drop" in
19 his left foot due to nerve root impingement and injury affecting Plaintiff
20 mobility, appearance, health and happiness.

21 **WHEREFORE**, Plaintiffs demand judgment against Defendants as follows:

- 22 1. Compensatory damages of \$500,000.00 dollars.
23 2. Costs incurred in this action;
24 3. Reasonable attorney fees; and
25 4. Any other and further relief the court considers proper.

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DATED: _____

Twomey Law Office

By: _____
Tim Twomey AK # 0505033
Attorney for Plaintiff,
CHARLES ARY, III